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In The
SUPREME COURT OF THE UNITED STATES
October Term, 2005

DONALD CURTIS SAMSON

Petitioner,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA

Respondent.

AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT, THE PEOPLE OF THE STATE OF CALIFORNIA BY THE LOS ANGELES COUNTY DISTRICT ATTORNEY ON BEHALF OF LOS ANGELES COUNTY

STEVE COOLEY
District Attorney
LAEL R. RUBIN
Head Deputy, Appellate Division
BRENTFORD J. FERREIRA
Deputy District Attorney
PHYLLIS C. ASAYAMA
Counsel of Record
Deputy District Attorney

Appellate Division
320 West Temple Street, Suite 540
Los Angeles, California 90012
Telephone: (213) 974-5916
Attorneys for Amicus Curiae

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Amicus curiae, Steve Cooley, District Attorney for the County of Los Angeles, State of California, submits this brief for filing as the authorized law officer of the county, pursuant to Supreme Court Rule 37, subdivision 4.[1]

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1. Los Angeles County Charter section 25 (1995) states:

> Each County officer, Board or Commission shall have the powers and perform the duties now or hereafter prescribed by general law, and by this charter as to such officer, Board of Commission.

It is provided in the California general law that:

> The district attorney is the general prosecutor, except as otherwise provided by law. The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for the public offenses.

Cal. Government Code section 26500. (West 1998).

INTEREST OF AMICUS CURIAE

The Los Angeles County District Attorney's Office is the largest prosecutorial agency in the state of California. The majority of inmates in the California State prison system come from Los Angeles County and the majority of parolees are Los Angeles County parolees. The necessity for close monitoring and supervision of parolees including where appropriate, searches by law enforcement officers of parolees based on California state law, is of utmost importance to the Los Angeles County District Attorney's Office. This case squarely presents an issue reserved by this court in *United States v. Knights*, 534 U.S. 112, 122 S.Ct. 587, 151 L.Ed.2d 497 (2001). Does the Fourth Amendment to the United States Constitution preclude a law enforcement officer from conducting a suspicionless search of a parolee, who is subject to that search under California state law, when the officer is aware of the individual's status as a parolee? For all of the reasons set forth in this amicus curiae brief, it is the position of the Los Angeles County District Attorney's office that such searches are permitted.

SUMMARY OF ARGUMENT

A suspicionless search must be justified under the special needs doctrine. The necessity and extent of the justification is controlled in part by the expectation of privacy to which the person is entitled. In *United States v. Knights*, 534 U.S. at 119, (hereinafter *Knights*), this Court posited a continuum of expectations of privacy based upon the degree of punishment to which a person has been subjected by the State. A parolee's expectation of privacy is only slightly greater than that of the prison inmate. *Hudson v. Palmer*, 468 U.S. 517, 530, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984).

The police officer in the instant case knew about the parolee's status. His purpose in conducting the search was intimately related to the supervision and monitoring of the parolee. Thus, justification for the search is based upon the special needs of the State to supervise the parolee and need not be subjected to the totality of the circumstances test. *Knights*, 534 U.S. at 118.

Where an officer knows about the search condition and also has evidence amounting to a reasonable suspicion of criminal activity, a search may be found to be justified *either* as a special need of the State, or reasonable under the totality of the circumstances. The fact that this Court found the search in *Knights* to be reasonable under the totality of the circumstances does not preclude an analysis that the search was also justified because of the special needs of the State.

Law enforcement's involvement in a search scheme to monitor and supervise parolees does not render the search scheme unconstitutional. The cases of *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000) (hereinafter Edmond) and *Ferguson v. City of Charleston*, 532 U.S. 67, 121 S.Ct. 1281, 149 L.Ed.2d 205 (2001) (hereinafter *Ferguson*), which involved warrantless, suspicionless searches of everyday citizens who enjoy the presumption of innocence, are inapposite where a parolee with a diminimus expectation of privacy is subject to such a search.

A parolee's residual expectation of privacy to be free of arbitrary, capricious and harassing searches comports with a fundamental purpose of the Fourth Amendment to prevent arbitrary and oppressive acts of the Government. *Skinner v. Railway Labor Executives' Assn*, 489 U.S. 602, 627-628, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989) (hereinafter *Skinner*) The search in this matter was not arbitrary, capricious or harassing and thus reasonable under the Fourth Amendment.

ARGUMENT

I. A SUSPCIONLESS SEARCH IS SUBJECT TO THE SPECIAL NEEDS DOCTRINE

This case squarely presents an issue specifically reserved by this Court in *Knights*, – under what circumstances, is a warrantless, suspicionless search of a parolee reasonable under the Fourth Amendment?

The question presented here is a very narrow one. Namely, if a law enforcement officer knows that the individual

is on parole and subject to a search condition, is a suspicionless search reasonable under the Fourth Amendment because of the special need of the state to closely monitor and supervise the parolee?

This Court has consistently applied the special needs doctrine to justify a warrantless, suspicionless search. In *Hudson v. Palmer*, 468 U.S. 517, this Court held that within the prison system, officials must ensure the safety of the staff, inmates and visitors; prevent the introduction of drugs and weapons into the prison; foil escape attempts, and maintain a sanitary living environment. *Id.* at 526-527. This Court further held that the expectations of privacy of the inmate that society was willing to recognize, were non-existent.

> We are satisfied that society would insist that the prisoner's expectation of privacy always yield to what must be considered the paramount interest in institutional security.

Id. at 528. The needs of the penal institution then were so compelling that even random searches, conducted without any established plan, were justified.

> "For one to advocate that prison searches must be conducted only pursuant to an enunciated general policy or when suspicion is directed at a particular inmate is to ignore the realities of prison operation. Random searches of inmates, individually or collectively, and their cells and lockers are valid and necessary to ensure the security of the institution and the safety of inmates and all others within its boundaries. This type of search allows prison officers flexibility and prevents inmates from anticipating, and thereby thwarting, a search for contraband." *Marrero v. Commonwealth*, 222 Va. 754, 757, 284 S.E.2d 809, 811 (1981)
>
> We share the concerns so well expressed by the Supreme Court and its view that wholly random searches are essential to the effective security of penal institutions.

Hudson v. Palmer, 468 U.S. at 529.

In *Griffin v. Wisconsin*, 483 U.S. 868, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987), this Court again resorted to the special needs exception to the warrant and probable cause requirement in the warrantless search of a probationer. The Wisconsin probationary scheme authorized a warrantless search if there existed "reasonable grounds" to believe that the probationer was in possession of contraband. The state Supreme Court of Wisconsin upheld the search, finding that a search based upon reasonable grounds, coupled with the probationer's reduced expectation of privacy was consistent with the Fourth Amendment. *Id.* at 872. However, in *Griffin*, this Court declined to impose a "reasonable grounds" standard on the search and instead found the warrantless search reasonable because of the special needs of the State to closely monitor and supervise its probationers.

> Supervision, then, is a "special need" of the State permitting a degree of impingement upon privacy that would not be constitutional if applied to the public at large.

Id. at 875. Like the incarcerated inmate, the reduced privacy right of the probationer and the special needs of the State, again justified a search without a warrant, and a "replacement of the standard of probable cause by 'reasonable grounds'"–a standard called for in the Wisconsin statute. *Id.* at 876.

Warrantless and suspicionless searches of individuals who, unlike the inmate and probationer in *Hudson* and *Griffin*, enjoy the presumption of innocence, have also been upheld by this Court. *See New York v. Burger*, 482 U.S. 691, 708-711, 107 S.Ct. 2636, 96 L.Ed.2d 601 (1987) (warrantless searches of automobile junkyards pursuant to inspection statutes upheld, recognizing the special need of the State to regulate certain businesses and the reduced expectation of privacy of an owner of a commercial premises in a closely regulated industry); *National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 668, 672, 109 S.Ct. 1384, 103 L.Ed.2d 685 (1989) (hereinafter *Von Raab*) ("the Government's need to conduct the suspicionless searches required by the Customs program

outweighs the privacy interests of employees engaged directly in drug interdiction," such employees being "directly involved in the interdiction of illegal drugs ... have a diminished expectation of privacy in respect to the intrusions occasioned by a urine test."); *Skinner*, 489 U.S. at 627, 628 ("expectations of privacy of covered employees are diminished by reasons of their participation in an industry that is regulated pervasively to ensure safety" and "the Government interest in testing without a showing of individualized suspicion is compelling"); *Veronia School District v. Wayne Acton*, 515 U.S. 646, 664-665, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995) (hereinafter *Veronia*) (random drug testing of school athletes was upheld: "Taking into account all the factors we have considered above–the decreased expectation of privacy, the relative unobtrusiveness of the search, and the severity of the need met by the search–we conclude Veronia's Policy is reasonable and hence constitutional.")

In each of the above cases, in addition to the compelling need of the State justifying a warrantless and suspicionless search, the person to be searched had a reduced expectation of privacy. Except for a convicted felon confined within the four walls of a prison, no other person has a lesser expectation of privacy than the convicted felon conditionally released on parole.

II. A PAROLEE'S EXPECTATION OF PRIVACY IS SO DIMINISHED AS TO REQUIRE LITTLE JUSTIFICATION UNDER THE SPECIAL NEED DOCTRINE

In *Knights*, 534 U.S. 112, this Court recognized that there exists in the criminal justice system a continuum of punishments for which there are varying degrees of liberty interests that are invaded by a search.

> "Probation, like incarceration, is 'a form of criminal sanction imposed by a court upon an offender after verdict, finding, or plea of guilty.'" [Citations.] Probation is "one point ...

> on a continuum of possible punishments ranging from solitary confinement in a maximum-security facility to a few hours of mandatory community service." 483 U.S. at 874. Inherent in the very nature of probation is that probationers "do not enjoy 'the absolute liberty to which every citizen is entitled.'" *Ibid.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 480, 33 L.Ed.2d 484, 92 S.Ct. 2593 (1972)). Just as other punishments for criminal convictions curtail an offender's freedoms, a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens.

Id. at p. 119. Thus, running alongside the continuum of punishments is a continuum of privacy interests in a reverse scale; the more severe the punishment that is imposed–therefore the more onerous the infringement on one's liberty interest–the less the privacy right that one can expect. *Cf. People v. Reyes*, 19 Cal.4th 743 (1998) ("[T]he court looks to a hierarchy of privacy interests. Reasonable expectations of privacy that society is prepared to recognize as legitimate receive the greatest level of protection; diminished expectations of privacy are more easily invaded; and subjective expectations of privacy that society is not prepared to recognize as legitimate have no protection. [Citations.]")

On the top-most rung of the punishment continuum, but on the bottom-most rung of the privacy interest continuum, is the convicted felon serving a term of imprisonment in a penal institution. While a prison inmate retains some constitutional rights such as the protection of due process, and the right to be protected from cruel and unusual punishment, an inmate has no right of privacy, even from arbitrary, capricious or harassing searches. (*Hudson v. Palmer* (468 U.S. 517, 523, 529, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1983).

The next rung in the continuum of privacy interests, just above the convicted felon incarcerated in prison, is the same felon released on parole under the supervision and control of the Department of Corrections. These parolees are the same

individuals who this Court has recognized as individuals who have demonstrated a "proclivity for anti-social criminal, and often violent conduct." *Hudson v. Palmer*, 468 U.S. at 526; *see also Pennsylvania Board of Probation and Parole v. Scott*, 524 U.S. 357, 365, 118 S.Ct. 2014, 141 L.Ed.2d 344 (hereinafter *Scott*) ("Parole is a 'variation on imprisonment of convicted criminals,' *Morrissey v. Brewer*, 408 U.S. 471, 477, 33 L.Ed.2d 484, 92 S.Ct. 2593 (1972), in which the State accords a limited degree of freedom in return for the parolee's assurance that he will comply with the often strict terms and conditions of his release.")

Once on parole, the parolee remains in the legal custody of the Department of Corrections. Cal. Pen. Code § 3056,[2] and is subject to numerous conditions and restrictions on his liberty. California Code of Regulations, title 15, section 2512, lists other conditions of parole that govern a parolee's life, including requiring a parolee to report any change of residence in advance; notifying the parole agent of a change of employment

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2. California Penal Code section 3056 states:

> Prisoners on parole shall remain under the legal custody of the department and shall be subject at any time to be taken back within the inclosure of the prison.

See also United States v. Crawford 372 F.3d 1048 (9th Cir. 2004) (en banc) (Trott, J., concurring)

> Eventually, Crawford became a California state parolee. In this capacity, California law impressed on him a legal status that materially altered his relationship with the *Fourth Amendment* and its warrant requirement. .... As the district court correctly said – before it became distracted by our mistaken decision in *United States v. Knights*, 219 F.3d 1138 (9th Cir. 2000), since overturned by the Supreme Court in *United States v. Knights*, 534 U.S. 112 ... – "Under California law, a parolee is in fact in the custody of the Department of Corrections...." *See Latta v. Fitzharris*, 521 F.2d 246, 249 (9th Cir. 1975) (en banc) ("A California parolee is in a different position from that of an ordinary citizen." He is still serving his sentence.)

Id. at p. 1063.

within 72 hours of any change; not traveling more than 50 miles from his residence without prior approval; not leave the county of residence for more than 48 hours; and not leave the state without prior written approval. A parolee may not own or possess any firearm, any weapon described in Penal Code section 12020, or any knife with a blade longer than two inches, with certain exceptions for the kitchen and employment, and the parolee may not possess a crossbow. (Cal. Code of Reg., tit. 15, § 2512.) Special conditions of parole that may be imposed include, participation in a psychiatric treatment program; participation in a residential program; abstaining from alcohol; anti-narcotics testing; maintaining a residence with a street address approved in writing; no active participation in a gang or participation with a gang or disruptive group; and no acquiring of tattoos. (Cal. Code of Reg., tit. 15, § 2513.)

The public has further codified what level of privacy it is willing to recognize for the parolee in California. Through its elected officials, society has mandated in every case that a convicted felon released on parole must submit himself to search and seizure of his person, residence or property by any parole or law enforcement officer, at any time, with or without a warrant, with or without cause. *See* Cal. Code Reg., tit. 15, § 2511; Cal. Pen. Code § 3067. California Penal Code section 3067, subdivision (a), requires that:

> Any inmate who is eligible for release on parole pursuant to this chapter shall agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause.

Cal. Pen. Code § 3067, subd. (a). Samson was therefore unambiguously informed of his search condition, and the condition "significantly diminished" his expectation of privacy. *Knights*, 534 U.S. at 119-120.

Given the stringent restraints placed upon the parolee and his status as a convicted felon recently released from prison, the parolee is entitled to no more than to be free from arbitrary and oppressive searches by the Government. That is,

as phrased by the California Supreme Court, the only expectation of privacy that a parolee has, and that society is willing to recognize, is an expectation to be free of arbitrary, capricious and harassing searches. *People v. Reyes*, 19 Cal.4th at 753-754.

III. THE SPECIAL NEEDS OF THE STATE TO MONITOR AND SUPERVISE PAROLEES ARE COMPELLING

The special needs of the State in supervising a probationer or parolee were established by this Court in *Griffin v. Wisconsin*, 483 U.S. 868.

> A State's operation of a probation system, like its operation of school, government office or prison, or its supervision of a regulated industry, likewise presents "special needs" beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements.

Id. at 873-874. This Court further observed that probationers and parolees "do not enjoy 'the absolute liberty to which every citizen is entitled, but only ... conditional liberty properly dependent on observance of special ... restrictions.' *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972)." *Id.* at p. 874.

> These restrictions are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer's being at large. [Citation.] These same goals require and justify the exercise of supervision to assure that the restrictions are in fact observed.... Supervision, then, is a "special need" of the State permitting a degree of impingement upon privacy that would not be constitutional if applied to the public at large.

Griffin v. Wisconsin, 483 U.S. at 875. The special needs apply no less and even more so to the parolee for whom a court or

legislature had determined that immediate incarceration was warranted.

California faces an overwhelming challenge in supervising its parolees.

> According to the authoritative California Journal, as of August 2000, California had 158,177 inmates in its prisons. Jeremy Travis and Sarah Lawrence, *California Parole Experiment,* Cal. J. (Aug. 2002). Of that population, 126,117 inmates were released on parole during that year. *Id.* Sadly, of that figure, 90,000 were returned to prison, either following a conviction of a new crime or for violating parole conditions. The California Criminal Justice Statistics Center's report prepared in April 2001 indicates that 68% of adult parolees are returned to prison: 55% for a parole violation and 13% for the commission of a new felony offense. California Attorney General, *Crime in California*, April 2001, at 37. According to the California Policy Research Center, "70% of the state's paroled felons reoffend within 18 months – the highest recidivism rate in the nation." Joan Petersilia, *Challenges of Prisoner Re-entry and Parole in California,* 12 CPRC (June 2000).

Crawford, 372 F.3d at 1069, fn. omitted (Trott, J., concurring).

The California Legislature has expressly provided that it

> finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. *It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees,* including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and

> discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

Cal. Pen. Code § 3000, subd. (a)(1), italics added.

In the context of parole violation hearings, this Court has said:

> In most cases, the State is willing to extend parole only because it is able to condition it upon compliance with certain requirements. The State thus has an "overwhelming interest" in ensuring that a parolee complies with those requirements and is returned to prison if he fails to do so. 408 U.S. at 483. ...The costs of allowing a parolee to avoid the consequences of his violation are compounded by the fact that parolees ... are more likely to commit future criminal offenses than are average citizens. See *Griffin v. Wisconsin*, 483 U.S. 868, 880 .... Indeed, this is the very premise behind the system of close parole supervision. *Ibid.*

Scott, 524 U.S. at 365.

Based on the codified statement expressed in California Penal Code section 3000, subdivision (a)(1), the studies cited in *Crawford*, and this Court's observations with regard to the likelihood of re-offense by a parolee, the special needs of the State to ensure compliance with the conditions of parole and the law, and the protection of society, are compelling.

A. THE SPECIAL NEEDS OF SUPERVISION JUSTIFY A WARRANTLESS AND SUSPICIONLESS SEARCH

The special needs of California's parole system make a warrant requirement "impracticable" and justify a suspicionless search. *Griffin v. Wisconsin* 483 U.S. 868, 876. An immediate on-the-spot search of a parolee is a valuable tool in ensuring that a parolee is abiding by the terms of his parole and more importantly complying with the law. The ability to search a

parolee on-the-spot, without a warrant, also has a dramatic deterrent effect. Every parolee in California is fully aware that if he commits a crime, the risk of being detected is significantly increased by virtue of the fact that law enforcement can act swiftly and immediately.

> [T]he delay inherent in obtaining a warrant would make it more difficult for probation officials to respond quickly to evidence of misconduct, see *New Jersey v. T.L.O.*, 469 U.S. [325 (1985)], at 340, and would reduce the deterrent effect that the possibility of expeditious searches would otherwise create, see *New York v. Burger*, 482 U.S. at 710; *United States v. Biswell*, 406 U.S. [311 (1972)] at 316.

Griffin v. Wisconsin, 483 U.S. at 876.

The ability to conduct a search of a parolee without individualized suspicion is again an important tool in supervising the parolee and most importantly in protecting the public. The State's special need to closely monitor the parolee, who has a severely diminished privacy right and to protect the public, dictate that such a parolee should be immediately searched without a warrant and regardless of the lack of evidence pointing to the parolee.

> [E]ven more than the requirement of a warrant, a probable-cause requirement would reduce the deterrent effect of the supervisory arrangement. The probationer would be assured that so long as his illegal (and perhaps socially dangerous) activities were sufficiently concealed as to give rise to no more than reasonable suspicion, they would go undetected and uncorrected.

Griffin v. Wisconsin, 483 U.S. at 878.

In the context of suspicionless, random, drug testing of student athletes who are cloaked with the presumption of innocence and who have a much greater expectation of privacy than the parolee, this Court stated:

> As to the efficacy of this means for addressing the problem: It seems to us self-evident that a drug problem largely fueled by the "role model" effect of athletes' drug use, and of particular danger to athletes, is effectively addressed by making sure that athletes do not use drugs. Respondents argue that a "less intrusive means to the same end" was available, namely, "drug testing on *suspicion* of drug use." ... We have repeatedly refused to declare that only the "least intrusive" search practicable can be reasonable under the Fourth Amendment. *Skinner, supra,* at 629, n. 9 (collecting cases).

Veronia, 515 U.S. at 663, italics added. A much greater need exists in the context of the parolee. The goal of supervising parolees to ensure that they are abiding the terms of their parole and complying with the law, is most effectively addressed by a warrantless, suspicionless search condition. Given the diminutive privacy right of the parolee, the intrusion is justified by the State's needs, and a *suspicionless* search condition is reasonable and constitutional.

B. THE INCLUSION OF LAW ENFORCEMENT IN THE SEARCH SCHEME IS REASONABLE

The fact that law enforcement officers, in addition to a parole officer, can conduct a warrantless, suspicionless search does not reduce the reasonableness of the search. Firstly, the California Legislature has determined that the exceedingly important task of monitoring parolees and protecting the public, calls for the involvement of law enforcement in addition to parole officers. The number of parolees in the state at any given time exceeds 100,000. *Crawford*, 372 F.3d at 1069 (Trott, J., concurring.) For a single parole officer with a large caseload of parolees, supervision might consist of a mere monthly phone call. The contact that a parolee may encounter with law enforcement, especially if that parolee is engaging in illegal

activities, is an invaluable tool in not only monitoring the parolee's activities, but in deterring illegal conduct.

This Court stated in the context of warrantless, suspicionless administrative searches:

> [W]e fail to see any constitutional significance in the fact that police officers, rather than "administrative" agents are permitted to conduct the § 415-a5 inspection. The significance respondent alleges lies in the role of police officers as enforcers of the penal laws and in the officers' power to arrest for offenses other than violations of the administrative scheme. It is, however, important to note that state police officers, like those in New York, have numerous duties in addition to those associated with traditional police work. See *People v. De Bour*, 40 N.Y.2d 210, 218, 352 N.E.2d 562, 568 (1976) ("To consider the actions of the police solely in terms of arrest and criminal process is an unnecessary distortion"); see also ABA Standards for Criminal Justice 1-1.1(b) and commentary (2d ed. 1980, Supp. 1982). As a practical matter, many States do not have the resources to assign the enforcement of a particular administrative scheme to a specialized agency. So long as a regulatory scheme is properly administrative, it is not rendered illegal by the fact that the inspecting officer has the power to arrest individuals for violations other than those created by the scheme itself. In sum, we decline to impose upon the States the burden of requiring the enforcement of their regulatory statutes to be carried out by specialized agents.

New York v. Burger, 482 U.S. 691, 717-718, 107 S.Ct. 2636, 96 L.Ed.2d 601, fn. omitted.

Secondly, when a law enforcement officer is aware of the parolee's parole status and therefore is aware of his search condition, the officer's purpose for the search includes

monitoring the conduct of the parolee for compliance with his parole conditions and the law. Regardless of whatever investigative purposes the officer may have in mind, when an officer is aware of the parolee's parole status and search condition, any search that he thereafter conducts carries out the intent of the Legislature that supervision of parolees includes search by law enforcement with or without a warrant or individualized suspicion.[3]

Thirdly, Petitioner's reliance on *Edmond*, 531 U.S. 32, and *Ferguson*, 532 U.S. 67, for the proposition that California's parolee search condition is not justified by the special needs of the State because of its "entanglement with law enforcement", *Brief for Petitioner* at 10, 33-39, is misplaced. In *Edmond*, Indianapolis police set up vehicle checkpoints for the purpose of drug interdiction. *Edmond*, 531 U.S. at 34-36. In *Ferguson*, hospital personnel were turning over positive drug test results of pregnant women to law enforcement, a program which prosecutors and law enforcement were instrumental in helping to set up. *Ferguson*, 532 U.S. at 70-72. Both of these searching schemes were aimed at average law-abiding citizens who enjoy the presumption of innocence, engaged in common activities. The search scheme was not aimed at convicted felons recently conditionally released from prison, who are still under the legal authority of the Department of Corrections, and who have no expectation of privacy except to be free from arbitrary, capricious and harassing searches. Thus, *Edmond* and *Ferguson* are clearly distinguishable from the case *sub judice*.

The potential for an arrest by law enforcement and criminal prosecution exists in many of the warrantless, suspicionless search schemes approved by this Court. In *Von*

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3. While not presented by the facts of this case, conversely, when an officer does not know about the parolee's status or the search condition, his purpose in conducting a search is unrelated to the supervision and monitoring of the parolee. Thus, justification for the search is not based upon the special needs of the State to supervise the parolee, rather the search must be reasonable under the totality of the circumstances, with the search condition and any reasonable suspicion known to the officer, being a salient circumstance. *United States v. Knights*, 534 U.S. at 118.

Raab, 489 U.S. 656, *Skinner*, 489 U.S. 602, *Griffin v. Wisconsin*, 483 U.S. 868, *New York v. Burger*, 482 U.S. 691, and *Veronia*, 515 U.S. 646, each of these cases sanctioned warrantless searches that involved the detection of potential penal violations – illegal drug use or operation of a conveyance while under the influence of alcohol. While this Court did not rule on the use of evidence obtained in these searches in criminal cases, the salient factor in each of these cases was not the possible discovery of evidence that could lead to criminal charges, rather the salient factor was that the scheme focused on a specific group with a reduced expectation of privacy. Where a suspicionless search scheme aims at a narrowly defined group with a diminished expectation of privacy, and the needs of the State for a suspicionless search are compelling, suspicionless searches are authorized by the Fourth Amendment. *Cf. Skinner*, 489 U.S. at 627-628, 631.

C. THE PAROLE SEARCH SCHEME NOTIFIES THE PAROLEE OF THE SEARCH CONDITION AND PROHIBITS AN ARBITRARY AND OPPRESSIVE SEARCH

California Penal Code section 3067, subdivision (a), requires that a parolee agree in writing to the search condition; thus, Samson was clearly informed of the condition. Case law and subdivision (d) of section 3067, limit the discretion of law enforcement such that a search may not be arbitrary or oppressive.

> (d) It is not the intent of the Legislature to authorize law enforcement officers to conduct searches for the sole purpose of harassment.

Cal. Pen. Code § 3067, subd. (d).

Contrary to Petitioner's assertion, a parolee's protection against arbitrary, capricious and harassing searches is neither "ineffective" nor "inconsistent with this Court's Fourth Amendment decisions." *Brief for Petitioners* at 8, 20-21. This Court has stated that

> [a]n essential purpose of a warrant requirement is to protect privacy interests by assuring citizens subject to a search or seizure that such intrusions are not the random or arbitrary acts of government agents.

Skinner, 489 U.S. at 621-622; *accord, Von Raab*, 489 U.S. at 672, n. 2 ("The procedures prescribed by the Customs Service for the collection and analysis of the requisite samples do not carry the grave potential for 'arbitrary, and oppressive interference with the privacy and personal security of Individuals,' [Citation], that the Fourth Amendment was designed to prevent.") A prohibition against arbitrary and oppressive acts by the Government is a standard used by this Court specifically in suspicionless searches, and in the case of a parolee, such a prohibition is the only residual right of privacy that he retains.

The search of Samson was reasonable under this standard. Samson was on a public street in broad daylight, walking with a woman and baby. J.A. 10. The officer, Rohleder, recognized Samson "from *a* prior contact." J.A. 10, italics added. Officer Rohleder *knew* that Samson was on parole and therefore was subject to a search condition. *People v. Middleton*, 131 Cal.App.4th 732, 740 (2005), (fn. omitted) ("the officers' awareness that [defendant] was a parolee was sufficient to inform them of their right to conduct a parole search").

Officer Rohleder had further heard from other officers that Samson "might have a parolee at large warrant." J.A. 10. Upon making contact with Samson, the officer asked Samson if he had a warrant out. J.A. 10. Samson verified for the officer that he indeed *did* have a warrant out, but that he had taken care of it. J.A. 10. Officer Rohleder then conducted a parole search of Samson, at which time the officer found methamphetamine inside a cigarette box. Samson was then placed under arrest. Officer Rohleder expressly testified that he conducted the search for the purpose of making "sure he's still obeying the laws." J.A. 10.

Officer Rohleder had but one prior contact with Samson. When he saw Samson he recognized him and remembered that other officers had told him Samson had a warrant out – information that Samson verified. Officer Rohleder contacted Samson and asked him about the warrant. Satisfied that there was no warrant, Officer Rohleder proceeded to conduct a search of Samson pursuant to Samson's parole condition, for the express purpose of verifying that he was complying with his conditions of parole. The fact that Samson recently cleared a parolee-at-large warrant would indicate that Samson, though now in compliance with the terms of his parole, recently had been out of compliance. The search was therefore *not* arbitrary and it was not oppressive, harassing or capricious. Further the search successfully accomplished what the parole condition was designed to do and what the Legislature intended when the condition was drafted – determine if Samson was abiding by the conditions of his parole and the law. He was not.

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CONCLUSION

Except for the incarcerated felon, there is no group entitled to a lesser expectation of privacy than the parolee. The State has a compelling need to closely supervise the parolee and to protect the public. This special need of the State is significantly furthered by a warrantless and suspicionless search condition that would be jeopardized by the imposition of a reasonable suspicion standard. The privacy interest of the parolee is exceptionally minimal while the special needs of the State to ensure that the parolee is abiding by the terms of his parole and complying with the law are extremely compelling. The special needs of the State overwhelmingly outweigh the minimal privacy rights of the parolee, and a warrantless search of a parolee without individualized suspicion is reasonable under the Fourth Amendment.

Respectfully submitted,

STEVE COOLEY
District Attorney of
Los Angeles County

By

LAEL R. RUBIN
Head Deputy District Attorney
Appellate Division

BRENTFORD J. FERREIRA
Deputy District Attorney

PHYLLIS C. ASAYAMA
Deputy District Attorney
(*Counsel of Record*)

Attorneys for Amicus Curiae